

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 JAMES R. ELLARS,

5 Plaintiff,

6 v.

7 CLARK COUNTY DETENTION RECORDS,

8 Defendant.
9

Case No. 2:21-cv-00943-APG-NJK

ORDER

10 This action began with the filing of a document entitled Request for Restoration of Credits
11 by a former prisoner. On May 20, 2021, Magistrate Judge Koppe ordered Plaintiff James R. Ellars
12 ("Ellars") to file a complaint or petition and an application to proceed *in forma pauperis* by a non-
13 inmate or pay the full filing fee of \$402 on or before June 21, 2021. (ECF No. 3). On June 7,
14 2021 and June 10, 2021, this Court received two notices of returned mail. (ECF Nos. 4, 5). The
15 June 21, 2021 deadline has now expired, and Ellars has not filed a complaint or petition, an
16 application to proceed *in forma pauperis* by a non-inmate, paid the full \$402 filing fee, or otherwise
17 responded to the Court's order.

18 District courts have the inherent power to control their dockets and "[i]n the exercise of
19 that power, they may impose sanctions including, where appropriate . . . dismissal" of a case.
20 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may
21 dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey
22 a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th
23 Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d
24 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring
25 amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming
26 dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of
27 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal
28 for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)

1 (affirming dismissal for lack of prosecution and failure to comply with local rules).

2 In determining whether to dismiss an action for lack of prosecution, failure to obey a court
3 order, or failure to comply with local rules, the court must consider several factors: (1) the public's
4 interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the
5 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
6 merits; and (5) the availability of less drastic alternatives. *See Thompson*, 782 F.2d at 831;
7 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*,
8 46 F.3d at 53.

9 Here, the Court finds that the first two factors, the public's interest in expeditiously
10 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
11 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of dismissal,
12 since a presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
13 ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th
14 Cir. 1976). The fourth factor—public policy favoring disposition of cases on their merits—is
15 greatly outweighed by the factors in favor of dismissal discussed herein. Finally, a court's warning
16 to a party that his failure to obey the court's order will result in dismissal satisfies the
17 "consideration of alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-
18 33; *Henderson*, 779 F.2d at 1424. Judge Koppe's order expressly stated: "IT IS FURTHER
19 ORDERED that, if Plaintiff does not file a complaint or petition and a fully complete application
20 to proceed *in forma pauperis* by a non-inmate or pay the full \$402 filing fee for a civil action on
21 or before June 21, 2021, this case will be subject to dismissal without prejudice." (ECF No. 3 at
22 3). Thus, Ellars had adequate warning that dismissal would result from his noncompliance with
23 Judge Koppe's order.

24 I THEREFORE ORDER that this action is dismissed without prejudice based on Plaintiff
25 James R. Ellar's failure to file a complaint or petition and an application to proceed *in forma*
26 *pauperis* by a non-inmate or pay the full \$402 filing fee in compliance with this Court's order
27 dated May 20, 2021.

28 ///

1 I FURTHER ORDER that the Clerk of Court shall enter judgment accordingly and close
2 this case. No additional documents may be filed in this now-closed case.

3 DATED: July 9, 2021

4 
5 _____
6 ANDREW P. GORDON
7 UNITED STATES DISTRICT JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28